Mr. Justice Strong

Submitted March 4. 79

8 Otto 761

Oct 3 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 173.

THE SAINT LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN R. LOFTIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED SEPTEMBER 24, 1878.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to the hon. supreme court of Arkansas, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court of Arkansas before you, or some of you, the highest court of law or equity of the said State in which a decision could be had in the said suit between the S't Louis, Iron Mountain & Southern Railway Company, appellant, and John R. Loftin, appellee, wherein was drawn in question the validity of a statute or treaty of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error has happened, to the great damage of the said appellant, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, the 16th day of May, in the year of our Lord one thousand eight hundred and seventy-six, and R. L. Goodrich, clerk of the circuit court for the eastern district of Arkansas.

[SEAL.] RALPH L. GOODRICH, *Clerk.*

The within writ of error is this day allowed by me.
May 16, 1876.

ELBERT H. ENGLISH,
Chief Justice Sup. Court of Arkansas.

(Indorsed:) S't Louis, Iron Mountain & Southern R'way Co. v. Jno. R. Loftin, coll., &c. Writ of error.

b United States of America to John R. Loftin, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Arkansas, wherein the S't Louis, Iron Mountain & Southern Railway Company is plaintiff in error and you are defendant in error, to show cause, if any you can, why judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, on this 16th day of May, 1876, and R. L. Goodrich, clerk of the United States circuit court of the eastern district of Arkansas.

I hereby acknowledge service of the within citation, May 16, 1876.

JOHN R. LOFTIN,
Collector for Jackson County,
By BENJAMIN BARNES,
His Attorney.

(Indorsed:) S't Louis, Iron Mountain & Southern R'way Co. v. Jno. R. Loftin, coll., &c. Citation.

1 STATE OF ARKANSAS, *ss:*

In the supreme court.

Be it remembered that at a term of the supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, on the 22d day, being the fourth Monday in November, A. D. 1875, were the following proceedings, on the 13th day of May, A. D. 1876, a day of said term, before the Hon. E. H. English, chief justice, and the Hon. David Walker and W'm Harrison, associate justices, in the case of S't Louis, Iron Mountain and Southern Railway Company, appellant, vs. John R. Loftin, appellee. Appeal from Jackson circuit court in chancery.

On the 1st day of April, 1876, the appellant filed in the office of the clerk of said supreme court the transcript of the record, which is in the following words:

Trans. of record of c't c't.

Pleas had and determined before the Hon. William Byers, judge and chancellor of the third judicial circuit of the State of Arkansas, in which is included the county of Jackson, at the March term of the circuit court in chancery sitting, of said county of Jackson; on the 23d day of March, A. D. 1876, among others the following proceedings were had, to wit:

Bill.

In the Jackson circuit court.

S'T LOUIS, IRON MOUNTAIN AND SOUTHERN Railway Company, plaintiff,
vs.
2 JOHN R. LOFTIN, DEFENDANT. } In chancery.

The plaintiff, the S't Louis, Iron Mountain and Southern Railway Company, a corporation created and organized under the laws of the State of Arkansas, brings this her suit against John R. Loftin, who is a citizen of the State of Arkansas, and would respectfully show that the Cairo and Fulton Railroad Company was duly incorporated by an act of the general assembly of the State of Arkansas, entitled "An act to incorporate the Cairo and Fulton Railroad Company," approved January 12, 1853, which provided, among other things, that all the rights,

privileges, immunities, and franchises contained in the charter granted at the same session of said general assembly to the Mississippi Valley Railroad Company, and not restricting or inconsistent with the said charter of the Cairo and Fulton Railroad Company, were extended to and should form a part of said incorporation of said Cairo and Fulton Railroad Company, as if the same were inserted therein.

That the act thus referred to was an act of the said general assembly, entitled "An act to incorporate the Mississippi Valley Railroad Company," approved January 12, 1853; that both of said acts were made public acts, and the last named act declared that it should be construed liberally for the objects therein set forth. That the said Cairo and Fulton Railroad Company was duly organized in accordance with the charter and franchises thus granted, and, under consolidation with other companies, still continues to exist, with its franchises unimpaired. That by an act of Congress, entitled "An act granting the right of way and making a grant of lands to the States of Arkansas and Missouri
3 to aid in the construction of a railroad from a point on the Mississippi opposite the mouth of the Ohio River via Little Rock to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River," approved February 9, 1853, it was enacted as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby granted to the States of Arkansas and Missouri for the construction of a railroad from a point on the Mississippi River opposite the mouth of the Ohio, in the State of Missouri, via Little Rock to the Texas boundary line, near Fulton, in Arkansas, with branches from Little Rock, in Arkansas, to the Mississippi River and to Fort Smith, in said State, with the right to take necessary materials of earth, stone, timber, &c., for the construction thereof: Provided, That the right of way shall not exceed one hundred feet on each side of the length thereof, and a copy of the survey of said road made under the direction of the legislatures of the said States shall be forwarded to the proper local land offices respectively, and to the General Land Office at Washington City, within ninety days after the completion of the same.

"SEC. 2. And be it further enacted, That there be and is hereby granted to the State of Arkansas and Missouri, respectively, for the purpose of aiding in making the railroad and branches, as aforesaid, within their respective limits, every alternate section of land designated by even numbers, for six sections in width, on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said roads is definitely fixed by the authority
4 aforesaid, sold any part of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to approval as aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or to which the right of pre-emption has attached, as aforesaid, which lands being equal in quantity to one-half of six sections in width on each side of said road, the States of Arkansas and Missouri shall have and hold to and for the uses and purposes aforesaid: Provided, That the lands to be located shall in no case be further than fifteen miles from the line of the road: And provided further, That the lands hereby granted shall be applied in the

construction of said road, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever: And provided further, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of the said railroad and branches through such reserved lands.

"SEC. 3. And be it further enacted, That the sections and parts of sections of land, which, by such grant, shall remain to the United States within six miles on each side of said road shall not be sold for less than double the minimum price of the public lands when sold.

"SEC. 4. And be it further enacted, That the lands hereby granted to the States shall be subject to the disposal of the legislatures
5 thereof, for the purpose aforesaid, and no other; and the said railroad and branches shall be and remain a public highway, for the use of the Government of the United States, free from toll or other charge, upon the transportation of any property or troops of the United States.

"SEC. 5. And be it further enacted, That the lands hereby granted to said States shall be disposed of by said States, only in the manner following: That is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of said road, may be sold; and when the governors of said State or States shall certify to the Secretary of the Interior that twenty continuous miles of said road is completed, then another like quantity of land hereby granted may be sold, and so from time to time until said road is completed; and if said road is not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 6. And be it further enacted, That the United States mail shall at all times be transported on the said road and branches, under the direction of the postoffice department, at such price as Congress may by law direct."

That by an act of the general assembly of the State of Arkansas, entitled "An act to aid in the construction of the Cairo and Fulton Railroad," approved January 16, 1855, it was enacted as follows:

"That the lands within this State, along the entire length of the Cairo and Fulton Railroad, from the Missouri line to the Texas boundary, with the right conferred by the act of Congress of entering other lands in lieu of such as may have been sold or appropriated by the United States, and which lands were granted by an act of Congress to the State of Arkansas, to aid in the construction of a railroad from a point on the Mississippi, opposite the mouth of the Ohio River
6 via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River, approved February 9, 1853, are hereby granted to the Cairo and Fulton Railroad Company, so that they may be legally applied to aid in the construction of said main trunk line of said railroad separately from either of said branches thereof."

Which grant was duly accepted by said Cairo and Fulton Railroad Company. That afterwards, by act of Congress, entitled "An act to revise and extend the provisions of 'An act granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point upon the Mississippi, opposite the mouth of the Ohio River via Little Rock to the Texas bound-

ary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River, approved February 9, 1853, and for other purposes,'" approved July 28, 1866, it was among other things provided as follows:

"That there is hereby granted, added to, and made part of the donation of lands hereby renewed and made subject to the same uses and trusts, and under the same custody, control, and conditions, and to be held and disposed of in the same manner, as if included in the original grant, all the alternate sections and parts of sections designated by odd numbers, lying along the outer line of lands heretofore granted, and within five miles on each side thereof, excepting lands reserved or otherwise appropriated by law, or to which the right of pre-emption or homestead settlement has attached: Provided, that the additional quantity of land hereby granted, when added to the lands specified in section one hereof, shall not exceed, in the aggregate quantity of lands by this act granted, sufficient to amount to ten sections for each mile of railroad."

7 Your orator would further show that the said railroad company completed and equipped said road within the time prescribed by law, and made the same a first class railroad; so that the conditions of said grant were fully performed, and the title to said lands became absolutely vested in said company. That it was on the security and value of said grants of land, with the exemptions annexed to the same, that the means were acquired for building and equipping the same. That the total cost of said railroad and equipments was about the sum of eleven millions one hundred and fifty-seven thousand dollars, and that the amount raised by subscription and applied to that purpose, and all amounts thus secured from every source except that of the said lands, did not exceed the sum of three hundred thousand dollars; so that the lands comprised nearly the entire capital stock of said company. The available assets of the company consisted of the said lands. That it was only through these land-grants that the company was enabled to build and equip said road, having no credit except such as was based on said lands, and no other property out of which money could be raised for that purpose.

That in order to advance and secure the building of said railroad, regarding it as a public highway of the greatest importance, the legislature of the State of Arkansas, long prior to the building of the road, passed several acts to exempt the property of said company from taxation, intending thereby to engage men of capital to invest their means in said enterprise. That the said act of the general assembly of the State of Arkansas to incorporate said company, approved January 12, 1853, contained the following provision on that subject:

"That the capital stock and dividends of said company shall be forever exempt from taxation. The road, fixtures, and appurtenances shall be exempt from taxation until after it pays an interest of not less than ten per cent. per annum."

8 That the said act of incorporation of the Mississippi Valley Railroad Company, approved January 12, 1853, contained the following provision:

"That the capital stock of said company, with all the immunities and franchises herein specified, and all machines, cars, engines, or carriages belonging to said company, together with all their works and property, and all profits which shall arise from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares; and the capital stock of said company

and the dividends shall be exempted from taxation until a dividend of six per cent. is realized upon the capital stock; and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempted from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be levied on said road or its fixtures which will reduce the dividends below ten per cent. per annum. Said stockholders shall not be bound or liable for any greater amount than the respective shares of stock which they or either of them own."

That afterwards, by an act of said general assembly entitled "An act to aid in the construction of the Cairo and Fulton Railroad," approved January 16, 1855, it was, among other things, provided as follows:

"That after the expiration of twenty years from the date of the completion of the said Cairo and Fulton Railroad from the Missouri line to the Texas boundary-line to the point where said road shall cross Red River, near Fulton, said company shall pay into the State treasury an annual tax upon the road, fixtures, lands, and tenements, and houses equal to that paid upon other taxable property in this State for the time being, and for the purposes of taxation the road, fixtures, lands, tenements, and houses shall be considered separate and distinct
9 from the capital stock, whether all the capital stock shall be expended in building said road, fixtures, houses, tenements, or not, and the capital stock shall be exempt from taxation as provided for in the eleventh section of said Cairo and Fulton Railroad charter, approved the 12th of January, 1853."

That by a subsequent act of said general assembly, entitled "An act to amend an act to aid in the construction of the Cairo and Fulton Railroad, approved January 16, 1853," which was approved on the 26th day of November, 1856, it was, among other things, provided as follows:

"That after said Cairo and Fulton Railroad shall have been completed, and shall have declared a dividend of ten per cent. per annum upon the capital stock of said company, then, and in that event, said Cairo and Fulton Railroad Company shall pay into the State treasury two and one-half per centum upon their nett proceeds annually."

And your orator says that twenty years have not elapsed since the date of the completion of said railroad (the said road having been completed on the 15th January, 1874); and that the said railroad has never paid an interest of ten per cent. per annum on the investment wherewith it was built, nor has it declared or paid a dividend of ten per centum per annum on its capital stock; nor has it declared or paid any interest or dividend whatever; nor has it been able to declare or pay any interest or dividend whatever, the road being new, running mostly through a sparsely settled country and being indebted for the entire means of its construction, and having a heavy interest account, to be settled annually, for debts incurred on the faith of said lands and exemption connected therewith, as aforesaid. That the total quantity of the lands granted as aforesaid amounted to about one million four hundred thou-
10 sand of acres; that these lands are wild, uncultivated, and unproductive; that but a small part of them have been sold, and that they constitute the principal dependence of said company for the payment of the debts contracted for the building and equipping of said road.

And the plaintiff says that all of said several acts of the legislature were accepted by said company, and became a contract between it and the State of Arkansas.

That the said railroad company, for the purpose of raising money for the building and equipping of said road, issued its bonds for the sum of eight millions of dollars, each being for the sum of one thousand dollars, dated on the 10th day of December, 1870, payable on the 1st day of January, 1891, at the office of the Union Trust Company, in the city of New York, with interest thereon at the rate of seven per centum per annum, payable semi-annually, in gold coin of the United States, at the office of the Union Trust Company aforesaid; and that the debt, and other debts, created for the building and equipping said road still remain unpaid.

And the plaintiff further says that the general assembly of the State of Arkansas, by an act entitled "An act to aid in internal improvement," approved April 8, 1869, enacted among other things that each railroad company in this State should, on or before the first day of January in each year, furnish to the auditor of public accounts a full list of all lands acquired by grant, donation, or subscription in aid of the construction of its road, which lands should not be listed nor subject to taxation until conveyed to actual purchasers by such company; and that the said railroad company did furnish to the auditor of public accounts a full list of all her lands acquired by grant, donation, or subscription in aid of the construction of its road, which had not been conveyed to actual purchasers by said company, before the first days
11 of January, 1873 and 1874, as required by such act. That under the laws of the State of Arkansas and Missouri, the Cairo and Fulton Railroad Company was duly consolidated with the S't Louis and Iron Mountain Railroad Company, under the name of the S't Louis, Iron Mountain and Southern Railway Company, under which name the plaintiff here sues.

And the plaintiff says that, notwithstanding these facts, the assessor of Jackson County has assessed for taxation a large quantity of the lands of said company lying in said county, all of which the said railway company derived through said grant, and which are described as follows, each tract being of the assessed value thereto annexed, as set forth in the following certified list:

List of lands lying in Jackson County, Arkansas, taxed to the Cairo & Fulton Railroad Company for the year 1875, as they appear upon the tax-books.

No. 1.

Parts of sec.	No. of sec.	Township.	Range.	No. of acres.	Valuation.
S. E. ¼ of S. E. ¼	5	10	1	40.24	80 00
W. ½ " N. E	9	10	1	80.00	160 00
E. ½ " N. W	9	10	1	80.00	160 00
E. ½ " S. W	9	10	1	80.00	160 00
W. ½ " S. E	9	10	1	80.00	160 00
All of	11	10	1	640.00	1,280 00
E. ½ N. E	17	10	1	80.00	160 00
N. W. N. E	17	10	1	40.00	80 00
W. ½ N. E	21	10	1	80.00	160 00
W. ½ S. E	21	10	1	80.00	160 00
W. ½	21	10	1	320.00	140 00
S. W. N. E	29	10	1	40.00	80 00
12 S. W. ¼	33	10	1	160.00	320 00
S. E. N. E	1	11	1	40.00	160 00
N. ½ N. E	1	11	1	80.00	160 00
N. W. N. E	3	11	1	53 04	100 00
S. ½ N. E	3	11	1	79.98	200 00
S. E. N. E	3	11	1	53.97	100 00
E. ½ S. W	5	11	1	95.06	200 00
W. ½ S. E	5	11	1	80.00	160 00
W. ½ N. W. frl	7	11	1	46.05	100 00
S. W. frl. ¼	7	11	1	97.27	200 00
E. ½ N. W	11	11	1	80.00	200 00
N. E. N. E	11	11	1	40.00	100 00
N. E. ¼	15	11	1	160.00	320 00
W. ½ S. E	15	11	1	80.00	200 00
N. W. ¼	15	11	1	160.00	320 00
W. ½ S. W. ¼	15	11	1	80.00	160 00
W. ½	21	11	1	320.00	640 00
N. E. ¼	21	11	1	160.00	320 00
S. ½ S. E	21	11	1	80.00	160 00
N. W. S. E	21	11	1	40.00	80 00
N. W. ¼	25	11	1	160.00	320 00
S. ½ S. E	25	11	1	80.00	160 00
N. ½ S. W	27	11	1	80.00	160 00
W. ½ S. E	27	11	1	80.00	160 00
N. E. ¼	27	11	1	160.00	320 00
E. ½ N. W. ¼	27	11	1	80.00	160 00
N. W. N. W	27	11	1	40.00	80 00
S. W. S. E	29	11	1	40.00	80 00
S. ½ S. W	31	11	1	50.81	100 00
S. W. S. E	33	11	1	40.00	80 00
W. ½ N. E. ¼	35	11	1	80.00	160 00
S. E. S. W	1	12	1	40.00	80 00
13 N. W. N. E	1	12	1	40.00	100 00
S. W. S. W	1	12	1	40.00	80 00
S. W. N. W	3	12	1	39.07	100 00
W. ½ S. W	3	12	1	80.00	160 00
S. ½ N. W	4	12	1	79.90	240 00
S. W. ¼	4	12	1	160.00	480 00
S. W. N. E	4	12	1	39.92	120 00
E. ½	9	12	1	320.00	600 00
S. W. ¼	9	12	1	160.00	320 00
E. ½ N. W	9	12	1	80.00	160 00
E. ½ S. W	11	12	1	80.00	200 00
N. W. N. E	11	12	1	40.00	120 00
N. E. N. W	15	12	1	40.00	200 00

No. 2.

W. ½ N. W	15	12	1	80.00	400 00
S. E. S. W	15	12	1	40.00	200 00
S. ½ S. E	15	12	1	80.00	400 00
S. E. S. E	19	12	1	40.00	120 00
S. E. S. W	23	12	1	40.00	120 00
S. W. S. E	23	12	1	40.00	120 00
W. ½ S. E	23	12	1	80.00	240 00
S. ½ S. W	25	12	1	80.09	160 00
S. W. S. E	25	12	1	40.00	120 00

List of lands lying in Jackson County Arkansas, &c.—Continued.

No. 2.

Parts of sec.	No. of sec.	Township.	Range.	No. of acres.	Valuation.	
E. ½ S. W	25	12	1	80.00	160 00	
N. W. N. E	25	12	1	40.00	80 00	
N. E. N. W	27	12	1	40.00	100 00	
E. ½ N. E	27	12	1	80.00	160 00	
N. E. S. W	27	12	1	40.00	80 00	
E. ½ S. W.	29	12	1	80.00	160 00	
S. W. N. E	29	12	1	40.00	80 00	
S. W. S. W	29	12	1	40.00	80 00	
W. ½ S. E	29	12	1	80.00	160 00	
14 E. ½ N. E	29	12	1	80.00	160 00	
S. E. N. W	29	12	1	40.00	80 00	
N. W. N. E	30	12	1	40.00	120 00	
N. E. ¼	31	12	1	160.00	320 00	
N. E. S. E	31	12	1	40.00	80 00	
W. ½ S. W.	33	12	1	80.00	160 00	
N. E. S. W.	33	12	1	40.00	80 00	
W. ½ S. E	33	12	1	80.00	160 00	
S. ½ N. W	33	12	1	80.00	160 00	
N. W. N. W	33	12	1	40.00	80 00	
N. E. ¼	35	12	1	160.00	320 00	
N. E. S. E	4	13	1	40.00	120 00	
S. W. N. W	8	13	1	40.00	120 00	
N. W. S. W	8	13	1	40.00	120 00	
N. W. ¼	10	13	1	160.00	320 00	
S. ½ S. W. ¼	10	13	1	80.00	160 00	
N. W. S. W	10	13	1	40.00	80.00	
W. ½ S. E	14	13	1	80.00	240 00	
S. E. ¼	30	13	1	160.00	480 00	
S. ½ N. E	30	13	1	80.00	240 00	
W. ½ S. W	30	13	1	82.46	240 00	
N. E. S. W	30	13	1	40.00	120 00	
S. W. S. W	32	13	1	40.00	120 00	
N. W. S. E	32	13	1	40.00	120 00	
E. ½ S. W	32	13	1	80.00	240 00	
N. W. ¼	2	14	1	185.75	320 00	
E. ½ S. E	8	14	1	85.84	240 00	
E. ½ N. E	8	14	4	85.84	240 00	
E. ½ S. E	10	14	1	80.00	240 00	
S. E. N. W	10	14	1	37.63	120 00	
E. ½ S. W	10	14	1	75.43	240 00	
15 S. ½ N E	14	14	1	80.00	160 00	
N. E. N. E	14	14	1	40.00	80 00	
N. W. ¼	14	14	1	160.00	480 00	
W. ½ N. E	24	14	1	80.00	240 00	
W. ½ S. E	24	14	1	80.00	240 00	
N. ½ S. E	26	14	1	80.00	240 00	
N. E. N. W	28	14	1	40.00	120 00	

No. 3.

N. E. ¼ N. W. ¼	30	14	1	40.00	120 00	
W. ½ N. E. ¼	34	14	1	80.00	240 00	
S. E. ¼ N. W	34	14	1	40.00	120 00	
N. ½	36	14	1	320.00	960 00	
W. ½ S. E. ¼	36	14	1	80.00	240 00	
Lots 8 & 9 S. W. ¼	19	9	2	80.00	560 00	
W. ½ N. E. ¼	5	10	2	98 11/100	200 00	
S. E. ¼ S. E. ¼	5	10	2	40.00	120 00	
E. ½ S. W. ¼	5	10	2	80.00	240 00	
Lot 1 S. W. ¼	6	10	2	80.00	.....	Paid.
S. ½ E. ½ lot 2 S. W	6	10	2	74 32/100	.....	Paid.
Lots 1 & 2 N. W. ¼	6	10	2	160.00	800 00	
N. E. S. E.	7	10	2	40.00	280 00	
W. ½ N. W	13	10	2	80.00	240 00	
N. W. S. E	15	10	2	40.00	120 00	
N. W. N. E	19	10	2	40.00	200 00	
N. E. S. W	23	10	2	40.00	200 00	
W. ½ S. E	23	10	2	80.00	400 00	
W. ½ N. W	1	11	2	91 55/100	300 00	
S. E. S. W	2	11	2	40.00	120 00	
S. ½ N. W.	2	11	2	80.00	240 00	
W. ½ S. W	2	11	2	80.00	240 00	
E. ½ lot 1 N. W	4	11	2	40.00	120 00	
16 N ½ S. W. ¼	4	11	2	80.00	240 00	

List of Lands lying in Jackson County, Arkansas, &c.—Continued.

No. 3.

Parts of sec.	No. of sec.	Township.	Range.	No. of acres.	Valuation.
S. E. S. W	4	11	2	40.00	120 00
S. W. N. E	6	11	2	40.00	280 00
Lot 10 N. W	6	11	2	40.00	280 00
N. ½ N. W	8	11	2	80.00	160 00
S. W. N. W	8	11	2	40.00	80 00
N. W. S. W	8	11	2	40.00	80 00
W. ½ N. E	10	11	2	80.00	240 00
N. W. S. E	10	11	2	40.00	120 00
S. W. ¼	10	11	2	160.00	480 00
W. ½ S. E	11	11	2	80.00	160 00
E. ½ S. W	11	11	2	80.00	160 00
W. ½ N. E	13	11	2	80.00	160.00
E. ½ N. W	13	11	2	80.00	160.00
W. ½ S. E	13	11	2	80.00	160 00
E. ½ S. W	13	11	2	80.00	160 00
N. W. N. E	18	11	2	40.00	120 00
E. ½ lot' 1 & 2 N. W	18	11	2	75.75	240 00
Lot 2 S. W. ¼	18	11	2	148.95/100	420 00
N. ½ lot 1 S. W	18	11	2	40.00	120 00
N. W. N. W	20	11	2	40.00	80 00
N. W. S. W	20	11	2	40.00	80 00
N. ½	23	11	2	320.00	960 00
N. E. S. W	23	11	2	40.00	120 00
E. ½ N. W	25	11	2	80.00	240 00
S. ½ N. E	27	11	2	80.00	160 00
S. ½ S. W	27	11	2	80.00	160 00
N. ½ N. W	27	11	2	80.00	160 00
S. W. N. E	28	11	2	40.00	80 00
W. ½ N. E	30	11	2	80.00	240 00
W. ½ S. E	30	11	2	80.00	240 00
17 W. ½	30	11	2	461.85/100	1,200 00
S. ½ N. W	32	11	2	80 00	160 00
W. ½ S. E	32	11	2	80 00	160 00
S. W. ¼	32	11	2	160 00	320 00
S. E. N. E	33	11	2	40 00	80 00
W. ½ S. E	33	11	2	80 00	160 00
W. ½	35	11	2	320 00	640 00
N. E. S. W	8	12	2	40 00	200 00
N. W. S. W	12	12	2	40 00	120 00
S. W. N. W	14	12	2	40 00	120 00
W. ½ S. E	18	12	2	80 00	400 00
S. ½ N. W	24	12	2	80 00	240 00
N. W. S. W	24	12	2	40 00	120 00

No. 4.

S. E. S. W	24	12	2	40 00	120 00
W. ½ S. E	24	12	2	80 00	240 00
W. ½	26	12	2	320 00	960 00
S. E. S. E	30	12	2	40 00	200 00
W. ½ N. E	32	12	2	80 00	400 00
W. ½ S. E	32	12	2	80 00	400 00
E. ½ N. E	34	12	2	80 00	400 00
N. W. ¼	36	12	2	160 00	800 00
W. ½ N. E. ¼	36	12	2	80 00	400 00
W. ½ S. W	36	12	2	80 00	400 00
E. ½ S. W	10	13	2	80 00	640 00
E. ½ S. E	12	13	2	80 00	400 00
S. W. N. W	12	13	2	40 00	200 00
N. W. S. E	14	13	2	40 00	200 00
W. ½ N. E	22	13	2	80 00	560 00
W. ½ S. E	22	13	2	80 00	560 00
N. E. S. W	22	13	2	40 00	280 00
18 E. ½ N. W	26	13	2	80 00	400 00
N. E. S. W	26	13	2	40 00	200 00
S. E. N. E	26	13	2	40 00	20 00
N. ½ S. E	26	13	2	80 00	400 00
S. E. S. E	26	13	2	40 00	200 00
S. E. S. E	28	13	2	40 00	200 00
W. ½ S. W	28	13	2	80 00	400 00
S. W. S. W	28	13	2	40 00	200 00

List of lands lying in Jackson County, Arkansas, &c.—Continued.

No. 4.

Parts of sec.	No. of sec.	Township.	Range.	No. of acres.	Valuation.
NE. ¼ E.	30	13	2	80 00	400 00
S. W. N. E	30	13	2	40 00	200 00
S. E. ¼	30	13	2	160 00	800 00
Lot 1 N. W	30	13	2	80 00	240 00
N. E. N. E	32	13	2	38 31	120 00
S. E. N. W	32	13	2	40 00	120 00
S. E. S. W	34	13	2	40 00	80 00
N. E. N. W	34	13	2	40 00	200 00
S. W. S. W	34	13	2	40 00	200 00
S. W. S. E	4	14	2	40 00	80 00
W. ½ S. E	10	14	2	80 00	160 00
N. E. N. W	24	14	2	40 00	120 00
E. ½ S. E	36	14	2	80 00	320 00
S. ½ N. E	2	10	3	79 32	400 00
S. ½ N. W	2	10	3	80 32	400 00
N. ½ S. E	2	10	3	80 00	400 00
S. W. ¼	2	10	3	160 00	800 00
Lots 12, 13, 14 & 15, N. ½	6	10	3	313 19	940 00
W. ½ S. E	6	10	3	80 00	240 00
S. W. S. W	8	10	3	40 00	120 00
All of	10	10	3	640 00	1,920 00
S. W. S. E	12	10	3	40 00	120 00
S. E. S. W	12	10	3	40 00	120 00
19 W. ½ S. E	14	10	3	80 00	240 00
W. ½ N. E	14	10	3	80 00	240 00
E. ½ N. W	14	10	3	80 00	240 00
N. E. S. W	14	10	3	40 00	120 00
P't N. fr.	18	10	3	54 61	120 00
E. ½	20	10	3	315 27	900 00
N. ½ S. W	20	10	3	80 00	240 00
S. ½	22	10	3	320 00	960 00
S. ½ N. W	22	10	3	80 00	240 00
N. E. N. W	22	10	3	40	120 00
N. W. fr. N. Lake	24	10	3	17 57	50 00
S. W. fr. S. Lake	24	10	3	1 53	3 00
W. ½ N. W	26	10	3	80 00	240 00
N. W. S. W	26	10	3	40 00	120 00
Fr. p't W. L	28	10	3	9 62	27 00
S. W. N. E	30	10	3	40 00	120 00
W. ½ S. W	30	10	3	80 00	240 00
Fr. p't	32	10	3	204 61	600 00
N. E. N. W	4	11	3	58 56	120 00
N. E. N. W	8	11	3	40 00	280 00
W. ½ N. W	8	11	3	80 00	560 00
W. ½ S. W	8	11	3	80 00	560 00
N. ½ N. E	18	11	3	80 00	240 00
N. ½ N. W	18	11	3	167	480 00
S. E. N. W	18	11	3	40 00	200 00
Lot 1 & 2 S. W	18	11	3	80 00	400 00
N. ½ S. E	18	11	3	80 00	400 00
N. ½ S. E	18	11	3	80 00	400 00
Lot 6 N. W	30	11	3	48 75	240 00
" 8, 9, & 10 N. W	30	11	3	120 00	360 00
N. ½ N. W	34	11	3	80 00	240 00
20 N. E. N. W	12	12	3	40 00	120 00
W. ½ N. E	18	12	3	47 34	100 00
N. W. fr.	18	12	3	13 83	30 00
Island S. W. ¼	30	12	3	26 33	50 00
S. ½ N. E	12	13	3	80 00	120 00
W. ½ N. E	24	13	3	80 00	400 00
S. E. N. W	24	13	3	40 00	200 00
N. W. S. E	24	13	3	40 00	200 00
E. ½ S. W	24	13	3	80 00	400 00
S. W. N. E	28	13	3	40 00	200 00
S. E. S. W	28	13	3	40 00	200 00
N. E. N. W	34	13	3	40 00	160 00
E. ½ N. W	36	13	3	80 00	400 00
E. ½ N. E	2	10	4	81 69	400 00
W. ½ N. W	2	10	4	79 13	400 00
S. W. ¼	2	10	4	160 00	800 00
E. ½ S. E	2	10	4	80 00	400 00
S. W. S. E	2	10	4	40 00	200 00
S. W. ¼	4	10	4	155 24	320 00
N. ½	4	10	4	320 00	640 00
E. ½ N. E	6	10	4	74 37	160 00

List of lands lying in Jackson County, Arkansas, &c.—Continued.

No. 4.

Parts of sec.	No. of sec.	Township.	Range.	No. of acres.	Valuation.
W. ½ N. E	6	10	4	74 40	160 00
W. ½	6	10	4	288 73	600 00
All of	8	10	4	640 00	1,280 00
N. ½ N. ½	10	10	4	160 00	480 00
S. ½	10	10	4	320 00	960 00
W. ½ N. W	14	10	4	80 00	560 00
N. E. N. W	14	10	4	40 00	280 00
N. ½	18	10	4	314 11	600 00
S. ½ N. E	20	10	4	80 00	160 00
S. E. N. E	20	10	4	40 00	80 00
21 S. E. ¼	20	10	4	160 00	320 00
W. ½	20	10	4	320 00	640 00
S. ½ S. W	22	10	4	80 00	400 00
W. ½ N. E	22	10	4	80 00	400 00
S. W. S. W	22	10	4	40 00	200 00
N. W. ¼	20	10	4	160 00	800 00
W. ½ N. E	28	10	4	80 00	160 00
S. W. S. E	28	10	4	40 00	80 00
N. E. S. W	28	10	4	40 00	80 00
N. E. S. E	30	10	4	40 00	80 00
W. ½	30	10	4	338 70	640 00
All of	3	10	5	647 64	1,300 00
W. ½	5	10	5	320 00	640 00
N. E. ¼	5	10	5	160 00	320 00
S. W. ¼	7	10	5	147 84	400 00
N. W. ¼	11	10	5	160 00	400 00
N. E. S. W	11	10	5	40 00	120 00
W. ½ S. W	11	10	5	80 00	240 00
S. ½	19	10	5	320 00	640 00
W. ½	31	10	5	290 18	600 00
S. E. ¼	32	10	5	160 00	320 00

STATE OF ARKANSAS,
County of Jackson:

I, John R. Loftin, sheriff and ex-officio collector of taxes in and for the county aforesaid, do hereby certify that the foregoing list of lands and valuation is a true and correct list of the lands and the valuation of each particular tract set opposite which are assessed to the Cairo & Fulton railroad, as appears from the tax-books now in my hands for the year 1875.

22 Witness my hand this the 10th day of March, A. D. 1876.

JOHN R. LOFTIN,
Sheriff & Ex-officio Collector of Jackson County, Ark's.

And the plaintiff says that the tax-book made out from said assessment has been placed in the hands of the defendant, who is the sheriff and collector of taxes of the State of Arkansas for said county, who has demanded payment of said taxes amounting in the aggregate to over five thousand dollars, and who threatens to proceed to sell the said lands if the said taxes are not paid; and the plaintiff has reason to believe and does believe that said defendant, unless restrained by injunction, will proceed to do so. That by such sale a cloud will be cast on the title held to said lands by the plaintiff, which will render them unsaleable in the market, and that the said sale cannot be annulled in a court of law without bringing a multiplicity of suits against persons who may purchase at said tax sale.

The premises being seen, the plaintiff prays that said defendant may be required to answer this bill according to the practice of this court; that a temporary injunction may issue commanding him, and any other agents or confederates of his, to refrain from any and all attempts to enforce the collection of said taxes, or any part thereof; and that in a final hearing the said injunction may be made perpetual; and for all other and proper relief.

U. M. ROSE,
For Plaintiff.

On which bill the following indorsements appear, to wit: "No.
23 138, equity. S't Louis, Iron Mountain & Southern Railway Co. vs. John R. Loftin, collector, &c. Filed March 23d, 1876. F. R. Hardgrave, clerk, by S. Kellogg, D. C. Rose."

And the demurrer filed in this cause reads in words and figures following, to wit:

Demurrer.

In the Jackson circuit court.

S'T LOUIS, IRON MOUNTAIN & SOUTHERN RAILway Company, plaintiff,
vs.
JOHN R. LOFTIN, DEFENDANT.

And defendant comes and demurs to the complaint herein, and for cause says that the same does not set forth facts sufficient to constitute a cause of action.

J. L. ABENETHY,
For Defendant.

And upon the above and foregoing demurrer appear the following endorsements, to wit: "No. 13, equity. S. L., I. M. & S. R'y Co. vs. John R. Loftin, collector, &c. Demurrer. Filed March 23d, 1876. F. R. Hardgrave, clerk, by S. Kellogg, d. c."

And on March 23d, 1876, the following further proceedings were had, to wit:

Filing complaint & demurrer.

SAINT LOUIS, IRON MOUNTAIN & SOUTHERN Railway Company, plaintiffs,
vs.
JOHN R. LOFTIN, AS COLLECTOR OF JACKSON County, defendant.

Now on this day came the plaintiff, by U. M. Rose, her solicitor, and by leave of the court files her complaint herein; and also came the defendant, by J. L. Abernethy, esq., his solicitor, and files his de-
24 murrer to the complain herein, which is now submitted to the court, and the court being now fully advised in the premises,
Demurrer sust'd. doth sustain said demurrer. It is therefore considered and adjudged that said complaint herein be and the same is dismissed for

Complaint dismissed. the want of equity; and that the plaintiff pay all the costs of this suit; and the said plaintiff at the time excepts to said ruling of the court, and asks that her exceptions be noted of record, which is ac-
Plaintiff appeals. cordingly done; and the plaintiff thereupon prays an appeal to the supreme court, which is granted.

STATE OF ARKANSAS,
County of Jackson:

I, Felix R. Hardgrave, clerk of the circuit court and ex-officio clerk of chancery court and recorder in and for the county aforesaid, do hereby certify that the above and foregoing pages contain a full, true, and complete copy of all the papers and proceedings had before the Hon. William Byers, judge and chancellor of the Jackson circuit court, at the March term thereof, in the case of S't Louis, Iron Mountain and Southern Railway Company is plaintiff and John R. Loftin, as sheriff and ex-officio collector of Jackson County, Arkansas, is defendant, as the same now appear on file in my office and of record in the chancery court Record Book E, page 149.

In testimony whereof I have hereunto set my hand and seal of said court this 28th day of March, A. D. 1876.

[L. S.] FELIX R. HARDGRAVE,
Clerk and Ex-officio Recorder,
By R. W. KELLOGG, *D. C.*

25 And afterwards, to wit, on the 1st day of April, 1876, a day of said term, were the following proceedings:

Pro. in supreme ct.

Appeal from Jackson circuit court, returnable to May term, 1876.

S'T LOUIS, IRON MOUNTAIN AND SOUTHERN Railway Company
vs.
JOHN R. LOFTIN.

Filing motion to advance.

Comes the appellant by attorney, and on motion it is ordered that leave be granted to file a motion to advance this cause, which is returnable to the May term, and docket it for adjudication at the present term, as the same involves a question of great importance to the public and to the State at large; and said motion is filed.

Order to advance.

And the court being now advised thereof, it is ordered that this cause be docketed and stand for adjudication at the present term; and that it be set for argument on Saturday next.

Which said motion to advance is in the following words:

The appellant comes and shows to the court that this cause involves a question of great importance to the public, and to the State at large; being the question whether the lands granted to the several railroad companies in the State, by the State of Arkansas and by the United

States, are taxable by the State, and by the counties and municipalities through which said roads run, and which said roads have lands.

U. M. ROSE.

MONDAY, *April 24th*, 1876.

Come the appellant and appellee by their attorneys, and the argument in this cause is commenced and progressed in, but not concluded.

26 TUESDAY, *April 25th*, 1876.

Come the said appellant and appellee by their attorneys, and the argument in this cause is continued, but not concluded.

Submission.

WEDNESDAY, *April 26th*, 1876.

Come the appellant and appellee by their attorneys, and the argument of this cause is concluded; and it is submitted on the argument and briefs filed, and by the court taken under advisement.

And afterwards, to wit, on the said 13th day of May, A. D. 1876, were the following proceedings:

Judgment of sup. ct.

This cause came on to be heard upon the transcript of the record of the circuit court of Jackson County, in chancery; on consideration whereof, it is the opinion of the court that there is no error in the proceedings and judgment and decree of said circuit court in chancery in this cause; and it is the judgment of the court that there is nothing in the act of the general assembly of this State, entitled "An act to assess all the lands in this State heretofore donated to any railroad corporation, where the title to such lands has passed from the Government of the United States," approved November 30th, 1875, that impairs the obligation of any contract between the State of Arkansas and the Cairo and Fulton Railroad Company, or the appellant, and nothing that is in contravention of section ten of article one of the Constitution of the United States, declaring that no State shall pass any law impairing the obligation of contracts; to which ruling the appellant at the time excepted.

It is therefore considered by the court that the judgment and decree of said circuit court, in chancery, in this cause rendered, be, and
27 the same is hereby, in all things affirmed with costs.

It is further considered that said appellee recover of said appellant all his costs in this court in this cause expended, and have execution thereof.

And at the same time the court, by the Hon. David Walker, A. J., delivered the following opinion in this cause:

Opinion of the court.

The plaintiff, a corporation organized and chartered under an act of incorporation passed by the general assembly of the State of Arkansas, brought suit in the Jackson circuit court against John R. Loften, to injoin him, as collector of taxes in said county, from the collection of the

taxes assessed and levied upon the lands of plaintiff, which were granted by the United States to the State of Arkansas, to aid in making the Cairo and Fulton Railroad, and by the State granted to said company, and which by acts of consolidation became, and now are, the property of plaintiff.

It is alleged in the complaint that under the charter and subsequent acts of the legislature the lands were exempt from taxation; that defendant, as collector of taxes, threatens to sell the lands for the payment of the taxes so assessed, and unless restrained by injunction will proceed to do so.

The defendant entered his appearance, and filed a demurrer to the bill, which was by the court sustained, and the bill dismissed for want of equity, from which judgment plaintiff has appealed to this court.

The sufficiency of the bill to entitle the plaintiff to the relief prayed is presented for consideration.

Plaintiff states that by an act of the general assembly of the State of Arkansas, approved January 12, 1853, the Cairo and Fulton Rail-
28 road was duly incorporated, and that among other things it was in said act provided that the "rights, privileges, immunities, and franchises contained in a charter of same date, granted to the Mississippi Valley Railroad Company, not restricting or inconsistent with the charter of the Cairo and Fulton Railroad, were extended to and form a part of the Cairo and Fulton charter as fully as if inserted therein."

That said acts were declared public acts, and were to be liberally construed.

That the Cairo and Fulton Railroad Company were duly organized in accordance with the charter and franchises given, and under consolidation with other railroad companies still continues to exist with its franchises unimpaired.

That subsequently, on the 9th of February, 1853, the Congress of the United States granted to the corporation the right of way through the public lands through which the contemplated railroad was to pass; and also granted to the State of Arkansas, for the purpose of aiding in making said road, every alternate section of land, distinguished by even numbers, for six sections in width on each side of said road, and giving to the road other lands in lieu of those sold, or held by pre-emption on even sections, to be selected on either side of the grant, within 15 miles from the road-bed; with a proviso that the lands so granted should be applied in the construction of the road, and should be disposed of only as the road progressed, and then to be applied to no other purpose whatever.

That these lands were granted by the Congress of the United States to the State of Arkansas, subject to the disposal of the legislature thereof; but only in a quantity not exceeding one hundred and
29 twenty sections included in a continuous length of twenty miles of said road might be sold. And that if the road should not be completed within ten years no further sale should be made, and the lands should revert to the United States.

That by a subsequent act of Congress, approved July 28th, 1866, this land grant was renewed and made subject to the same use and trust as provided in the original grant.

That the State of Arkansas, by an act of the general assembly approved January 16th, 1855, granted these lands to the Cairo and Fulton Railroad Company to aid the company in the construction of the road, and that the grant was accepted by the company.

That said company completed and equipped the road within the time prescribed by law, and made the same a first-class road.

That the conditions of the grant have been complied with and the title to the lands absolutely vested in the company.

That it was on the security and value of said grant of lands, in the exemptions made to the same, that the means were acquired for building and equipping the same.

That the total cost of said railroad and equipments was about eleven millions one hundred and fifty-seven thousand dollars.

That the amount raised by subscription and applied to that purpose, and all amounts received from every source, except that of the lands, did not exceed the sum of three hundred thousand dollars; that the available assets of the company consisted of said lands; that it was only through these land grants that the company was enabled to build and equip the road, having no credit except such as was based upon the lands, and no other property out of which money could be raised for that purpose.

30 That long before the road was built the legislature of Arkansas passed several acts to exempt the property of the company from taxation.

That the act of incorporation approved Jan. 12, 1853, provided that the capital stock and dividends of said company should be forever exempt from taxation; and that the road, fixtures, and appurtenances should be exempt from taxation until after it paid an interest of not less than ten per cent. per annum, and that so much of the Mississippi Valley Railroad charter as was consistent with, and did not limit the charter of the Cairo and Fulton Company, should be taken as part of said charter.

That by the act of 16 January, 1855, it was provided: "That after the expiration of twenty years from the completion of the Cairo and Fulton Road, the company should pay into the State treasury an annual tax upon the road, fixtures, lands, tenements, and houses, equal to that paid upon other taxable property in this State for the time being; and for the purposes of taxation, the road, fixtures, land, tenements, and houses shall be considered separate and distinct from the capital stock, whether all of the capital shall be expended in building said road, fixtures, houses, and tenements, or not. And the capital shall be exempt from taxation as provided for in the eleventh section of the Cairo and Fulton Railroad charter.

And that by a subsequent act of said legislature approved November 26th, 1856, it was provided that after the road was completed and shall have declared a dividend of ten per cent. per annum upon the capital stock of company, then, and in that event, said company shall pay to the State treasurer two and one-half per centum upon their nett proceeds annually.

31 Plaintiff says that twenty years have not elapsed since the completion of the road; that it was not completed until January 15th, 1874; that the road never paid an interest of ten per cent. per annum on the investment wherewith it was built, nor has it declared or paid a dividend of ten per centum on its capital stock; nor has it declared or paid any interest or dividend whatever.

That the total quantity of land granted is about one million four hundred thousand acres of wild, uncultivated land, but a small amount of which has been sold, and that the lands constitute the principal dependence of the company for means with which to pay the debts contracted for building and equipping the road.

That for the purpose of raising money with which to build and equip the road the company has issued its bonds for the sum of eight millions of dollars payable first of January, 1891, with interest, which remains unpaid.

That by an act of the general assembly of Arkansas, April 8th, 1869, plaintiffs were required to list their lands, and did so, but by the provisions of this act the lands were not to be taxed.

That under the laws of Arkansas and Missouri the Cairo and Fulton Railroad Company was consolidated with the S't Louis and Iron Mountain Railroad Company, under the name of the S't Louis, Iron Mountain and Southern Railway Company, under which name plaintiff sues.

That defendant is about to sell the lands so granted without authority of law, and prays that he be enjoined from doing so.

This is the state of case made by plaintiff and which we have set forth at more than usual length, because the questions of law to be determined arise upon the sufficiency of the allegations in the bill to
32 entitle plaintiff to the relief sought.

It may, at the outset, be well to remark that the provisions of the act of January 16th, 1855, to which plaintiff has made reference in his bill, was repealed by the 8th sec. of the act of November 26th, 1856, and that so much of the act of April 8th, 1869, as exempted the lands so granted from taxation, was repealed by an act of the general assembly of the State approved November 30th, 1875.

The first section of this act provides that the assessors in the different counties of this State shall, at the time he assesses the personal property in his county, in the year 1875, assess and place on the tax-book of his county, under the same rules and restrictions as is required in assessing land in this State, all the land in his county heretofore donated, granted, or given to any railroad or railroad company, where the title to the land has passed from the United States Government; and said lands shall be thereafter assessed and taxed as other lands in this State.

"SEC. 2. That all laws and parts of laws in conflict with this act be, and the same are hereby, repealed. And that this act take effect and be in force from and after its passage."

It is under this act that a tax was levied, and to restrain the collection of which this suit was brought. All the acts by which these lands were exempted from taxation, except the 11th of the act of 12 January, 1853, under which the charter was granted, were repealed. They were mere voluntary acts of exemption which did not bind future legislatures.

The power of taxation is sovereign and inherent in the government, and extends over all property not expressly exempted from taxation by positive legislative enactment. The existence of the government depends upon its exercise. The amount necessary to be levied for the support of government must depend upon contingencies at times
33 not to be anticipated, and unless under peculiar and exceptional circumstances, and upon an adequate consideration, can never be made obligatory upon succeeding legislatures upon whom the responsibility rests to supply the necessary revenue for the support of the government.

"The general rule," says M'r Cooley, "is, that one legislative body cannot, by its own action, narrow the scope of legislative power; but with the same amplitude that it comes to the one body it must pass to the suc'essor. Pledges, therefore, or stipulations by one legislature regarding the future levy of taxes, though they may, under some circumstances, charge the conscience of their successors, are not limitations on legisla-

tive power, but may be observed or disregarded as it shall be thought the public necessity or policy may require." (Cooley on Taxation, 52; 22 Wallace, 575; 48 Mo., 287.)

The 11th section of the charter, which contains the exemption, stands upon different grounds. It was a public act, so declared, and the charter was doubtless granted upon a supposed benefit to the States, and in the estimation of the legislature that granted the charter, the general benefit and advantage to the State was taken as a sufficient consideration for the exemption.

The 11th section of the charter provides that the "capital stock" and dividends of said company shall be (forever) exempt from taxation; "the road, fixtures, and appurtenances shall be exempt from taxation until after it pays an interest of not less than ten per centum per annum."

The question at issue is, was the land subsequently granted to aid in the construction of the road part of the capital stock of the
34 company in the sense contemplated by the legislature at the time the charter was granted. If it was then the taxation of the land should be restrained; if not, the bill is demurrable, and the taxes should be collected.

Numerous adjudicated cases have been cited by counsel on both sides, tending to show what the courts have held to be capital stock, and exempted under the general terms "capital stock"; and after a most careful examination of all of them, we have found them but remotely bearing upon the question at issue. Several of the cases referred to were made under statutes which were passed after a land grant had been given, and, in some instances, the grants were conferred under acts of Congress much like that passed to aid the Cairo and Fulton Road. And it is worthy of observation that in all, or nearly all, of the cases whose grants were made to the States to aid in the construction of roads, that either in the act of the legislature accepting the grant, or in the act donating it by the State to the corporation, there were contained exemptions of the land so granted for a limited period, at the expiration of which the lands were to be taxed. And although the legislature of Arkansas did, in the act of January 16th, 1855, in express terms separate the road, fixtures, appurtenances, and the lands from the capital stock, and the time of exemption after which the whole of the property should be taxed, as other property in the State, and in contradistinction declared that the capital stock exempted in the 11th section of the charter should forever remain exempt from taxation, this act was repealed, but for which it would have settled the question at
35 issue. It, however, leaves no doubt whatever as to what the legislature intended when the grant was made by the State to the corporation. The act of 1855 was fuller and more explicit than most of the legislative acts of the other States where like grants had been disposed of.

In the 2d section it was provided "that after the expiration of twenty years from the completion of the said Cairo and Fulton Road, said company shall pay into the State treasury an annual tax upon the road, fixtures, lands, and tenements and houses, equal to that paid upon other taxable property in this State for the time being, and for the purposes of taxation the road, fixtures, lands, tenements, and houses shall be considered separate and distinct from the capital stock, whether all the capital stock shall be expended in building said road, &c., or not." And the "capital stock" shall be exempt from taxation, as provided for in the 11th sec. of the charter.

Taking this act as an expression of legislative will, it is evident that the lands were not granted to the corporation as a part of its capital stock, but, on the contrary, were, in express terms, distinguished from it; but we have seen that this act is not in force, nor is there any act whatever in force exempting the lands so granted to the railroad company from taxation for any period whatever.

It is alleged by plaintiffs in their bill that they accepted all of the several acts of the legislature, including that which repealed the act of 1855.

There is a class of cases referred to where questions growing out of the construction of charters and the legislative acts accepting the Congressional grant, and in disposing of it, to which we will refer.

In the case of State vs. Dulle et al., 48 Mo., 282, the question
36 arose upon the construction of the charter. It was provided in the charter that the capital stock, together with the machines, cars, works, and other property should vest in the stockholders, be deemed personal property, and be exempt from all public charges or taxes whatever for five years.

After this, an act accepting a land grant from the United States was passed to aid in the construction of the road, in which it was provided, "That the Pacific Railroad and the Southwestern Branch Railroad shall be exempt from taxation, respectively, until the same declared a dividend, when the road-bed, buildings, machinery, engines, and cars of such completed road, at the actual cash value thereof, shall be subject to taxation at the rate assessed by the State on other real and personal property."

By the act of 1851 all property of the corporation was exempt for five years. Under the act of 1852 the property of the road was exempt until it was opened, put in operation and declared a dividend. Under this state of case no question could arise as to what was included in the terms "cash capital."

In the case of City of S't Joseph vs. Hannibal & S't Joseph Railroad Company, 39 Mo., 476, the question presented was, whether under a charter of the company which exempted the stock of the company from taxation for State and county purposes was not a prohibition upon the legislature to pass an act to tax the property thus exempted (a tax was levied for corporation purposes): It was held that it did not, and that the levy of such city tax was not double taxation.

In the case of Hannibal and S't Joseph Railroad Company vs. Shackelford, 30 Mo., 550, the question was whether property of the
37 company consisting of road-bed, depot, cars, locomotives, and all the real and personal property necessary for the operation of the road, was liable to taxation under the general revenue laws of the State. The law provided that all property owned by incorporated companies, over and above their capital stock, should be taxed. The charter, granted in 1849, provided that the stock of said company "should be exempt from all State and county taxes." On the 20th Sep., 1852, an act was passed to donate to the company the lands that year granted to the State for the purpose of aiding the company to build the road. The 3d section of the act provided that in consideration of the grants and privileges conferred on said company, it shall in December of each year after said road is completed, and declares a dividend, pay a tax * * * on the road-bed, cars, &c., and other property of the company.

By an act of 23 Dec., 1855, passed for the purpose of applying a portion of the donation of Congress to the Pacific road, it was provided, the said Pacific Railroad and the Southwestern Branch of said road shall

be exempt from taxation until the same shall be completed, opened, and in operation.

Under the provisions of these several acts, the question arose as to whether the road-bed, machinery, depots, and other property used by the company in opening the road were to be considered part of the capital stock of the company.

No such question is presented in the case before us; no levy or attempt to levy upon the road-bed, fixtures, and appurtenances of the S't Louis, Iron Mountain and Southern Railway has been made, but only upon the lands granted to the company to aid in the construction of the road; no such question was presented before Judge Naptan as that before us. He refers to the several acts of the State of Mis-
38 souri, in which it is declared that the road-bed and machinery should be deemed part of the capital stock, and vested in the shareholders forever.

We have no such statute in Arkansas, and there is not a sentence in the opinion in that case which would aid us in the determination of the question as to whether the subsequent land grants given to aid the company to build the road was or not part of the capital stock of the company and held as such under its charter. Indeed the legislation, not only of Missouri, but of the other States in which land grants have been donated, negative the presumption that the grants were to be so considered. On the contrary, we find the legislatures, in the acts accepting the grants, or in conferring them upon the corporation, limiting and fixing the time when these grants shall be subject to taxation.

In the case of Trask vs. McGuire, 13 Wallace, 391: The S't Louis and Iron Mountain Railroad Company was incorporated March 3d, 1851. The capital stock was $6,000,000, and it was provided in the act that the stock of said company should be exempt from all State and county taxes.

On the 17th February, 1853, it was enacted that the engines, cars, machines, and other property belonging to said company should be deemed a part of the capital stock of the company, and vest in them forever. The State subsequently gave aid to the company, issued bonds which were used by the company, and were by contract to operate as a mortgage of the road in favor of the State.

The questions at issue arose upon the effect of the sale by the State under its mortgage. But there is this pregnant inference to be drawn, that but for this act declaring the road, fixtures, and property of the company "capital stock" it would not have been held as such.

39 Several cases have been cited by counsel to show that the exemption of capital stock from taxation, exempted only the stock and property which was necessary to carry on the business of the corporation, and that lands or other property not necessary for that purpose was not exempt from taxation.

Of these, is the case of Vermon' Central Railroad vs. Burlington, 28 Verm., 193. The charter of the road exempted the stock, property, and effects of the company from taxation. Held that the exemption was limited to such real estate as the company were authorized to take in invitum.

In 2d Municipality of New Orleans vs. Commercial Bank, 5 Rob., 151, the capital stock of the bank was exempted from taxation during the continuance of the charter. Held that nothing was exempt from taxation except the capital of the bank, $3,000,000, furnished by the stockholders for its operation.

In the Milwaukee & S't Paul Railroad Co. vs. The City of Milwaukee, 34 Wis., 271, the road, track, right of way, depots, buildings, work-shops,

rolling-stock, and all other property necessarily used in operating the road were exempted. Held that all the lots or parcels of land necessarily used by the company for its repair-shops, yards, or depot grounds were exempt; but that dwelling-houses and lands occupied for other purposes were not exempt.

In State (New Jersey Railroad Company) vs. Collectors of Wards of Newark, 1 Dutcher, 315, held that real estate owned by the railroad company, not used or occupied for the necessary purposes of the company, is liable to taxation, notwithstanding the corporation pays a tax on its capital stock.

In Bailey, collector, vs. Clark et al., 21 Wallace, 284, held that
40 the term "capital" does not include money borrowed from time to time in the course of business, but it applies only to the property or money of the banker set apart and manifestly invested in banking.

In New Haven vs. City Bank, 31 Conn., 106, the capital stock of the bank was by its charter exempt from taxation. A house was bought with the capital of the bank. The court seem to attach importance to this fact, and held that as it was used by the bank it should be exempt.

Giving to these decisions (several of which were made by courts of the highest authority) due consideration, they will be found to lead to no very satisfactory solution of the question at issue in the case under consideration, to determine which a reference to the charter, the purposes for which it was granted, the subsequent grant of lands to aid in building the road, and the conditions attached to the grant may lead to more satisfactory conclusions.

The act of January 12th, 1853, was passed to incorporate a joint stock company, which is defined by Angell and Ames, page 539, to be "a corporation which has for its object a dividend of profits among its stockholders. A corporation of this sort is invariably empowered to raise a certain amount of capital by the mutual subscription of its members, and this capital is divided into shares, which vest in the subscribers according to their respective contributions."

The stock of a railroad company, says M'r Justice Ingles, in State vs. Wood, 15 Richardson, 185, "is the aggregate of the property and effects of the company. In its original form, it is a sum of money contributed in fixed proportions of the adventure."

All of the necessary requisites to create and organize a joint
41 stock corporation are found in the first three sections of the act of incorporation of the Cairo and Fulton Company. The fourth section provides that the capital stock shall be one million five hundred thousand dollars, divided into shares of $25 each, which are declared to be personal property, which may be assigned & transferred in such manner as the board of directors may order, with power in the board, upon its requisition, to require payment of the sum subscribed, and requires of the board of directors to open books for the subscription of stock.

The 9th sec. provides, that the corporation may commence the construction of the road at any time after one hundred thousand dollars of capital stock shall have been subscribed, and 5 per cent. thereon paid to the board of directors.

The 11th section provides that the capital stock and dividends of said company shall be (forever) exempt from taxation. The "capital stock" declared to be forever exempt from taxation, was evidently the joint stock capital provided for in the preceding sections of the act, and that capital stock was a cash capital to be raised by subscription (in the first instance), subscribed stock, to be paid in cash upon the call of the board

of directors. That the money subscribed was not to be paid in at the time when it was subscribed was contemplated, but the subscribers bound themselves to pay when called upon, in such sums as the necessities of the corporation required, and hence the terms of description "subscribed stock" and "paid-in stock."

This was the character of the stock intended to be exempted from taxation. There was no other capital stock. Under the provisions of that charter there could be no other stock. This stock was to be forever exempt from taxation. The road and appurtenances were also to be exempt until it yielded a certain per cent. upon the capital in-
42 vested in making and equipping the road. The reason for this distinction is obvious. The capital was to be invested in building the road. It was subscribed and set apart for that purpose, and was intended to be absorbed and taken up in the road. It was not an active continuing capital, such as is required for banking purposes or for insurance corporations. Corporations of this kind are expected to keep a large amount of capital on hand. It is the capital thus held and used which yields the dividend. But in rail corporations, the capital is raised to be expended at once in building and equipping the road, and when the road is completed and put in operation, it is the road under its operation, which produces the dividend. It was evidently in contemplation of this fact, that the "capital stock" raised to be so expended, was exempted from taxation. And so with regard to the road when put in operation with its equipments. The exemption of these, the proceeds of the capital, was not to pay any tax until it yielded a profit of 10 per cent. per annum on the amount invested in building and equipping it.

It is contended for plaintiff that the land granted by Congress to aid in the construction of the road is also a part of its capital stock and covered by this exemption. A construction which lets the land in as part of the capital stock is altogether inconsistent with the theory that the capital is to survive the building of the road. The land is a realty, never to be exhausted or removed. The true intent of the grant was that the lands should be sold, should pass into other hands, and according to their value to remain like other lands, a perpetual source of
43 revenue to the State. An express provision was made for the sale of the land as each 20 miles of the road was built. It was the money arising from the sale of the lands, not the lands, which was to be applied as part of the capital to be used in building the road, and thus become absorbed in it. Such could not be the case wtih the lapd. It was perpetually to retain its identity. Its ownership too was to remain either the property of the corporation or of others. At the time the charter was granted no land grant had been made, no reference to it is made in the charter, no place for it as capital stock or otherwise. It was a money capital provided for to be raised by stock subscriptions. The money arising from the sale of the lands might be used as part of the capital appropriated for that purpose and exempted fr' taxation, but not the land.

It could not have entered into the minds of the members of the legislature, that when they were providing for the exemption of the capital stock of the corporation to be used in building the road and soon to be thus expended, that they were at the same time forever exempting several millions of acres of land extending north, south, and west through the heart of the State. No presumption can be raised from either declaration or purpose to encourage the belief that such was their intention.

It is a settled rule that no presumption in favor of exemption of property from taxation can be indulged. The exemption must be made upon a sufficient consideration, and be clearly shown to exist, and no presumption can be indulged in its favor. (Cooley on Taxation, page 52.)

In the case of Tucker vs. Furguson, 22 Wallace, 575, M'r Justice Swayne, who delivered the opinion of the court, said: "The taxing
44 power is vital to the foundations of government; it helps to sustain the social compact, and to give it efficacy. It is intended to promote the general welfare. It reaches the interest of every member of the community. It may be restrained by contract in special cases for the public good, where such contracts are not forbidden. But the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt shall be resolved against it. Where it exists it is to be rigidly scrutinized, and never permitted to extend, neither in scope nor duration, beyond what the terms of the concession clearly require. It is in derogation of public right and narrows a trust created for the good of all."

The rule thus laid down by M'r Justice Swayne, is fully sustained by authority; indeed there is none to the contrary, and when applied to the case before us, is in effect decisive of the question at issue.

The manifest injustice of permitting so large an amount of real estate (for all time to come) to be exempt from taxation, and as a consequence to impose the whole burden of taxation (from that source) upon the lands not so exempted, repels the presumption that such was the intention of the legislature, which, when considered in connection with the several provisions of the act of incorporation and the language used, renders it improbable that the lands so granted were intended to be embraced in the terms "capital stock", but if it should be a matter of doubt, whether such was the intention of the legislature under the rule laid down above, we should be constrained to hold that the lands were not intended to be exempted from taxation.

And we think that this construction of the provisions of the
45 charter is strengthened by the terms of the grant, its purpose, and the limitations imposed upon its use by Congress.

This grant of land was made to the State of Arkansas, in trust, to be disposed of by the legislature of the State to aid the corporation of the Cairo and Fulton Railroad Company in the construction of its road.

There appears to have been no formal acceptance of the grant by an act of the legislature, as was the case in several of the States to whom like grants of land were given.

But on the 16th of January, 1855, the legislature by legislative enactment transferred the lands so granted to the Cairo and Fulton Railroad Company, under all the limitations and restrictions imposed by the act of Congress.

That part of the act of the legislature which conferred upon the Cairo and Fulton Railroad Company the grant of land is as follows:

"SEC. 1. That the lands within this State along the entire length of the Cairo and Fulton Railroad * * with the rights conferred by the act of Congress of selecting other lands in lieu of such as may have been sold, or otherwise appropriated by the United States * * approved Feb'y 9, 1853, are hereby granted to the Cairo and Fulton Railroad Company, so that they may be legally applied in aid of the construction of said main trunk line of said road, separately from either of said branches thereof." And by an amendment to the act of January 16th, 1855, approved November 26th, 1856, it was expressly provided that the lands

granted were to be taken and held subject to all the conditions, limitations, and restrictions contained in the act of Congress granting said lands in trust to the State.

By the first section of the act of Congress, a right of way one
46 hundred feet wide on each side of the survey along its whole length was granted over the public lands of the United States.

The second section granted to the State of Arkansas for the purpose of aiding in making the railroad and branches within their respective limits, every alternate section of land designated by even numbers for six sections in width on each side of said road and branches, or if such even numbers or parts thereof have been appropriated by the United States, then there is to be selected by agents appointed for that purpose by the governor of the State from lands of the United States most contiguous to the tier of sections above specified so much land in alternate sections or parts of sections as shall be equal to the amount of lands disposed of by the United States which lay within the grant. The State of Arkansas shall have and hold to and for the use and purpose aforesaid, provided that the land hereby granted shall be applied in the construction of said road, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever.

The 4th sections provides "that the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purpose aforesaid and no other."

"SEC. 5. That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say: a quantity of land not exceeding one hundred and twenty sections and included within a continuous length of twenty miles of said road, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that twenty continuous miles of said road is completed then
47 another like quantity of land hereby granted may be sold; and so from time to time until the road is completed, and if said road is not completed within ten years, no further sales shall be made and the lands unsold shall revert to the United States."

Such was the grant and such the restrictions placed upon its use. It was a delegated trust conferred upon the State to be exercised under the limitations imposed and for a particular purpose. The State by its legislature was vested with power to dispose of this trust, and the grant was turned over to the corporation to be executed under all the limitations and restrictions imposed by the act of Congress.

After the most careful consideration of this grant, the limitations upon it, and the time and circumstances under which sales from time to time were to be made, we are unable to find anything in it, which, even remotely, tends to show that the lands were intended to be taken and held as capital stock, or that they were held up and reserved to the corporation from sale.

With regard to the proper construction to be given to the act of Congress and of the rights and duties of the State and of the corporation for whose benefit the grant was made, we are aided in our investigation by a recent decision of the Supreme Court of the United States. (Tucker vs. Ferguson, 22 Wallace, 527.)

The act of Congress which granted land to the State of Michigan to aid in the construction of Flint and Pere Marquette Railway Company, is about a literal copy of the act granting aid to the Cairo and Fulton Company, and the question presented for the consideration of the Supreme Court of the United States was in every respect like the
48 one we are considering. The object of the suit in that case, as in

this, was to enjoin the imposition of a tax upon the land granted to aid in the construction of that road.

The opinion of the court was delivered by M'r Justice Swayne, and is so clearly in point that we cannot but indulge in quoting from it, so far as it relates to the grant of land and the proper construction to be placed upon it. He says: "The United States granted the land to the State for a specific purpose; that purpose was to aid in the construction of railroads upon the ro'tes designated. The land was made subject to the disposal the legislature for the purpose aforesaid, and no other. Congress prescribed certain safeguards to secure their application to the construction of the road and prevent failure or diversion. The precautions were few and simple: except as to the first one hundred and twenty sections, the power of sale was to attach only as the road was completed in successive sections of twenty miles each.

"It is a conclusive answer to the proposition we are considering, that the United States have no more claim, legal or equitable, touching the land here in question than they have to lands which they have patented and sold to others in the regular course of the administration of the land department of the government, and that as Congress has not seen fit, either expressly or by implication, to impose any restrictions upon the taxing power of the State, that subject was remitted as, under the circumstances, it might well be, wholly to her wisdom and discretion. * * Upon general principles the State could not tax the land while the title remained in the United States, nor while she held them as trustee
49 of the United States. But when the State, proceeding in the execution of the trust, had transferred her entire title to the company and they had perfected their title and acquired the right to sell, the case assumed a very different aspect."

What was that different aspect? Most clearly it was that the title to the land had vested in the corporation. It was from that day that right of taxation was to commence, and in no wise depended upon the sale of the land. The corporation had, from that day, an indisputable right to sell. It was contemplated by the terms of the grant that it should sell the lands and vest the proceeds of the sale in building the road; and at the same instant the United States was divested of her title, the exemption of the lands belonging to the United States within the limits of the State reserved to the United States from taxation, as a condition upon which the State was admitted into the Union, and the corporation took the title, the lands became (unless specially exempted) liable, as all other lands of the State were, to taxation.

"The company," says M'r Justice Swayne, "so far as the matter of right is concerned, were upon a footing with all other alienees of the United States. The imposition of taxes can in no just sense be said to be a diminution of the value of the land. If Congress had thought so, they would have forbidden it. Liability to taxation is an incident to all real estate; exemption is an exception; when claimed, to be effectual, it must be clearly made out."

Yielding our assent to the correctness of this decision, we must hold that the right of taxation of the lands does not depend upon the fact as to whether the corporation had, or not, parted with its title. It
50 is a matter of no matter to the State, who the owner of the land may be; that it is land the title to which has been parted with by the United States, is all that is material to be seen. The tax is upon the land, and the right of taxation accrued to the State from the time the United States parted with it, unless exempted under the act of 1869, until it was repealed by the act of 1875.

The question as to whether plaintiff has or not parted with the land, is not before us. There is no allegation showing such sale. If such had been the case a different question might arise; but it is alleged that one million four hundred thousand acres of the land remain unsold.

It is true that there is an allegation that it was the security and credit given the company as the owners of the grant of land, with the exemptions claimed, that enabled it to raise the means to build and equip the road; and that in order to raise money for that purpose, the company issued its bonds for the sum of eight millions of dollars, dated on the 10th December, 1870, and payable first of January, 1891, at the office of the Union Trust Company, in the city of New York, with interest, and that the debts remain unpaid. But this is no averment of a sale of land, or even an incumbrance upon it. The title must be considered as remaining in the company.

More than twenty years have elapsed since this grant was made, by force of which these lands have been exempted from taxation, and, until within a few years, also from sale or settlement, because the company had failed to build the road and put themselves in position to receive the title, and by reason of which a wealth of revenue and population has been lost to the State.

51 Counsel for plaintiff assume that since the road has been completed, the lands will soon be sold, from which time they will be subject to taxation.

Whether this will be the case or not, is foreign to the question at issue—the right now to tax the lands. If exempt now, they are, according to the terms of exemption, forever exempt. The company will, or not, at their pleasure, dispose of the land. In a financial point of view, if the money for which the land is sold is worth more at interest than the increased value of the land will be, if held up from sale, they will likely be sold. The company will sell or not, as may seem best, and the exemption, if allowed, will enter largely into the consideration whether the lands are to be sold, or reserved from sale. If held for mining purposes, or for purposes of cultivation, the exemption of the land will carry with it an exemption of all fixtures and improvements placed upon them.

A question of more importance to the future prosperity of the State, or one in which the burden of the support of the State government could be more inequitably distributed has rarely, if ever before, been presented for the consideration of any court. But whatever the decision of the court may be, or however detrimental to the interests of the State, if the legislature has made a valid exemption of these lands, one which is to bind future legislatures, and which fixes a perpetual exemption from taxation, the court, without reference to the consequence which may result from so holding, should sustain the exemption and declare it valid.

The plaintiff has expended a large amount of capital in building and equipping the road, and it will require energy and close attention to make so large an investment remunerative. The amouns

52 claimed to have been expended exceeds $11,100,000, but it hat been seen that this large investment is, by the second clause of the exemption act, to be exempt from the payment of taxes until the road yields 10 per centum per annum on the amount expended in building the road and equipping it. Unless this per cent. is realized, there is, unquestionably, no tax to be collected from this source; and if, in addition to this, we should sustain the claim of plaintiff to an exemption of one million four hundred thousand acres of land as capital, it

would amount to a double exemption. The one, capital, remaining after the road has been for more than two years completed; the other, the products of the capital stock, or, as contended by plaintiff, of money loaned upon the credit that the corporation was the owner of the lands, and that they were not liable to taxation.

After a careful consideration of the case in all its bearings, we have been led to the following conclusions:

That the several statutes passed by the legislature, which exempted, or are claimed to have exempted the lands granted by Congress to aid in the construction of the road, from taxation(except the 11th section of the charter) were voluntary enactments, which the legislature had a right, at any time, to repeal, and that they have been repealed.

That the 11th section of the charter was passed upon a consideration of benefit to the State, by the construction of the road within its limits, and was not repealed.

That the capital stock exempted from taxation by the 11th section of the charter was the cash capital provided for in the 4th section of
53 the charter, and not lands.

That the land granted by Congress to aid in the construction of the road was not part of the capital stock of the road, nor exempted from taxation.

That when the United States parted with its title to the land and the same became the property of the corporation, the right of the State, in her sovereign capacity, to tax the land accrued, irrespective of sale or transfer by the corporation.

That the State of Arkansas, when she repealed the act of 1869, which exempted these lands from taxation, resumed her right of taxation, and had, under the provisions of the act of 1875, and of the general laws in reference to the levying and collecting taxes on lands in this State, a right to levy and collect such taxes, and was in the proper exercise of this power through her officers, and should not be restrained in its exercise.

And that the demurrer to the bill was properly sustained.

Let the judgment and decision of the circuit court of Jackson County be in all things affirmed.

Filing copy of writ of error & bond.

And afterwards, to wit, on the 16' day of May, A D. 1876, the said plaintiff by attorney, presented a writ of error issued out of the circuit court of the United States, for the eastern district of Arkansas, and allowed by the chief justice of our supreme court, and deposited in the office of the clerk of this court a copy of said writ, and filed the following bond:

Bond.

Know all men by these presents that we, James M. Loughborough and U. M. Rose, are held and firmly bound unto John R. Loftin in the just and full sum of two hundred and fifty dollars, to be paid to
54 him, the said Loftin, his executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 16th day of May, 1876.

Whereas, lately, at a term of the supreme court of Arkansas, in a suit depending in the said court between the S't Louis Iron Mountain and Southern Railway Company, appellant, and John R. Loftin, aforesaid,

appellee, judgment was rendered against the said railway company, and the said railway company having sued out a writ of error from the Supreme Court of the United States, for the purpose of removing said cause into the said Supreme Court of the United States, and filed a copy thereof in the office of the clerk of the said supreme court of Arkansas, to reverse the judgment of the said court in the aforesaid suit, and citation directed to the said Loftin, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday in October next:

Now the condition of the above obligation is such that if the said S't Louis, Iron Mountain and Southern Railway Company shall prosecute said writ of error to effect, and answer all damages and costs if she shall fail to make good her plea, then the above obligation to be void; else, to remain in full force and virtue.

JAMES M. LOUGHBOROUGH. [SEAL.]
U. M. ROSE. [SEAL.]

Approved.

E. H. ENGLISH,
Chief Justice Supreme Court of Arkansas.

STATE OF ARKANSAS,
In the Supreme Court:

I, Luke E. Barber, clerk of the supreme court of the State of
55 Arkansas, hereby certify that the foregoing 54 pages contain a full, true, and perfect transcript of the record and proceedings of the supreme court of said State in the case of the S't Louis Iron Mountain and Southern Railway Company vs. John R. Loftin, lately pending in said court, on appeal from the circuit court of Jackson County, in chancery, made and certified to the Supreme Court of the United States, in obedience to the mandate of the writ of error thereto attached.

In testimony whereof I hereto set my hand as clerk and affix the seal of said supreme court, at my office, in the city of Little Rock, State of Arkansas, this 12th day of July, A. D. 1876.

[SEAL.] L. E. BARBER, *Clerk.*

(Indorsement on cover:) No. 173. The S't Louis, Iron Mountain, & Southern Railway Company, plaintiff in error, vs. John R. Loftin. Arkansas sup. c't. Filed 30th September, 1876.

SUPREME COURT

OF THE UNITED STATES.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
PLAINTIFF IN ERROR,
VERSUS
JOHN LOFTIN, AS COLLECTOR,
DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF ARKANSAS.

BRIEF FOR PLAINTIFF IN ERROR.

SUPREME COURT

OF THE UNITED STATES.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
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DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF ARKANSAS.

BRIEF FOR PLAINTIFF IN ERROR.

HISTORY OF THE CASE.

This suit was originally brought by the plaintiff in error in the Jackson county circuit court, Arkansas, in chancery, against the defendant in error, to enjoin the collection of taxes on certain lands belonging to plaintiff. In Arkansas there is no trouble as to the jurisdiction in such cases, as the statute provides:

"The judge of the circuit court may grant injunctions and restraining orders in all cases of illegal or unauthorized taxes and assessments by county, city or other local tribunals, boards or officers."—*Dig.* 1874, *Sec.* 3451.

So no question of that kind was made, and the case went off on its merits.

The plaintiff contended that by contract, inviolable under the constitution of the United States, between the state and the

plaintiff, these lands were not subject to the payment of the taxes sought to be enjoined. The case turned wholly on the question of the proper construction of certain statutes, which are copied in the bill, by which it was made to appear that the Cairo and Fulton Railroad Company was incorporated by a statute of Arkansas, entitled "An Act to Incorporate the Cairo and Fulton Railroad Company," approved January 12, 1853.—*Acts* 1853–4, *p.* 176.

This act contained the following provisions:

"SECTION 4. The capital stock of said corporation shall be one million five hundred thousand dollars, which may be increased from time to time to any sum not exceeding the entire amount expended on account of said road, divided into shares of twenty-five dollars each, which shall be deemed personal property."

"SECTION 13. This act shall be deemed a public act, and shall be favorably construed for all purposes therein expressed, and declared in all courts and places whatsoever, and shall be in force from and after its passage; *Provided*, that all the rights, privileges, immunities and franchises contained in the charter granted at this session of the legislature of this state to 'The Mississippi Valley Railroad Company,' and not restricting or inconsistent with this act, are hereby extended to, and shall form a part of this incorporation as fully as if the same was inserted herein."

The act of incorporation of the Mississippi Valley Railroad Company, approved January 12, 1853, contained the following provision:

"SECTION 25. That the capital stock of said company, with all the immunities and franchises herein specified, and all machines, cars, engines or carriages belonging to said company, together with all their works and property, and all profits which shall arise from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares; and the capital stock of said company, and the dividends, shall be exempted from taxation until a dividend of six per cent. is realized upon the capital stock; and the road, with all its fixtures and appurtenances, including work-shops, warehouses and

vehicles of transportation, shall be exempted from taxation for the period of twenty-five years from the completion of the road, and no tax shall ever be levied on said road or its fixtures which will reduce the dividends below ten per cent. per annum. Said stockholders shall not be bound or liable for any greater amount than the respective shares of stock which they, or either of them own."—*Acts* 1853–4, *p.* 181.

This last-named act also contained the following provision:

"SECTION 30. This act shall take effect and be in force from and after its passage; and shall be deemed and taken to be a public act, and construed liberally for the object therein set forth, and the regular organization of the company shall be presumed and considered as proved in all courts of justice; and all laws and parts of laws in conflict with this act are hereby repealed."

On the 9th of February, 1853, congress made a large grant of lands to the states of Arkansas and Missouri for the purpose of aiding in building a railroad "from a point on the Mississippi river opposite the mouth of the Ohio, in the state of Missouri, via Little Rock, to the Texas boundary line, near Fulton, in Arkansas," etc. Afterwards, on the 28th of July, 1866, congress passed another act reviving this grant and enlarging it. These acts are set out in the bill. No questions arise on them.

By an act of the general assembly of the state of Arkansas, entitled "An act to aid in the construction of the Cairo and Fulton Railroad," approved January 16, 1855, it was enacted as follows:

"SECTION 1. That the lands within this state, along the entire length of the Cairo and Fulton Railroad, from the Missouri line to the Texas boundary, with the right conferred by the act of congress of entering other lands in lieu of such as may have been sold or appropriated by the United States, and which lands were granted by an act of congress to the state of Arkansas, to aid in the construction of a railroad from a point on the Mississippi, opposite the mouth of the Ohio river, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi river, approved February 9, 1853, are hereby granted to the Cairo and Fulton Railroad Company, so

that they may be legally applied in aid of the construction of said main trunk line of said railroad separately from either of said branches thereof."—*Acts* 1854–5, *p.* 149.

The same act contained the following provision:

"SECTION 2. That after the expiration of twenty years from the date of the completion of the said Cairo and Fulton Railroad, from the Missouri line to the Texas boundary line to the point where said road shall cross Red river, near Fulton, said company shall pay into the state treasury an annual tax upon the road, fixtures, lands and tenements, and houses, equal to that paid upon other taxable property in this state, for the time being, and for the purposes of taxation, the road, fixtures, lands, tenements and houses shall be considered separate and distinct from the capital stock, whether all the capital stock shall be expended in building said road, fixtures, houses, tenements or not; and the capital stock shall be exempt from taxation as provided for in the eleventh section of said Cairo and Fulton Railroad charter, approved the 12th of January, 1853."

By a subsequent act of the general assembly, entitled "An act to amend an act to aid in the construction of the Cairo and Fulton Railroad, approved January 16, 1853," which was approved on the 26th day of November, 1856, it was, among other things, provided as follows:

"SECTION 9. That after said Cairo and Fulton Railroad shall have been completed, and shall have declared a dividend of ten per cent. per annum upon the capital stock of said company, then, and in that event, said Cairo and Fulton Railroad Company shall pay into the state treasury two and one-half per centum upon their net proceeds annually."—*Acts* 1856, *p.* 4.

It was by means of the public grant, before mentioned that the railroad company acquired a title to the lands described in the bill. The bill charges that the grant of the lands and the incorporation of the company were conceded by the legislature in order to induce men of means to invest their money in the building of the road. The bill contains also the following statements:

"Your orator would further show that the said railroad com-

pany completed and equipped said road within the time prescribed by law, and made the same a first-class railroad; so that the conditions of said grant were fully performed, and the title to said lands became absolutely vested in said company. That it was on the security and value of said grants of land, with the exemptions annexed to the same, that the means were acquired for building and equipping the same. That the total cost of said railroad and equipments was about the sum of eleven millions one hundred and fifty-seven thousand dollars, and that the amount raised by subscription and applied to that purpose, and all amounts thus secured from every source except that of the said lands did not exceed the sum of three hundred thousand dollars; so that the said lands comprised nearly the entire capital stock of said company; the available assets of the company consisted of the said lands. That it was only through these land grants that the company was enabled to build and equip said road, having no credit except such as was based on said lands, and no other property out of which money could be raised for that purpose.

* * * * * * * * * * * *

"And your orator says that twenty years have not elapsed since the date of the completion of said railroad (the said road having been completed on the 15th January, 1874); and that the said railroad has never paid an interest of ten per cent. per annum on the investment wherewith it was built, nor has it declared or paid a dividend of ten per centum per annum on its capital stock; nor has it declared or paid any interest or dividend whatever; nor has it been able to declare or pay any interest or dividend whatever, the road being new, running mostly through a sparsely settled country, and being indebted for the entire means of construction, and having a heavy interest account to be settled annually for debts incurred on the faith of said lands and exemption connected therewith, as aforesaid. That the total quantity of the lands granted as aforesaid amounted to about one million four hundred thousand acres; that these lands are wild, uncultivated and unproductive; that

but a small part of them have been sold, and that they constitute the principal dependence of said company for the payment of the debts contracted for the building and equipping of said road.

"And the plaintiff says that all of said several acts of the legislature were accepted by said company and became a contract between it and the state of Arkansas.

"That the said railroad company, for the purpose of raising money for the building and equipping of said road, issued its bonds for the sum of eight millions of dollars, each being for the sum of one thousand dollars, dated on the 10th day of December, 1870, payable on the 1st day of January, 1891, at the office of the Union Trust Company, in the city of New York, with interest thereon at the rate of seven per centum per annum, payable semi-annually, in gold coin of the United States, at the office of the Union Trust Company aforesaid; and that this debt and other debts created for the building and equipping said road still remain unpaid."

The plaintiff is a company organized by a consolidation of the Cairo and Fulton Railroad Company with other railroad companies, and has succeeded to the rights of the Cairo and Fulton Company. The defendant demurred, the demurrer was sustained, and the suit was dismissed for want of equity. The plaintiff appealed to the supreme court of the state, where the decree below was affirmed. The plaintiff then brought error to this court.

The following is an extract from the judgment of the supreme court of Arkansas:

"It is the opinion of the court that there is no error in the proceedings and judgment and decree of said circuit court in chancery in this cause; and it is the judgment of the court that there is nothing in the act of the general assembly of this state entitled 'An act to assess all the lands in this state, heretofore donated to any railroad corporation, where the title to such lands has passed from the government of the United States,' approved November 30, 1875, that impairs the obligation of any contract between the state of Arkansas and the Cairo and Fulton Rail-

road Company, or the appellant, and nothing that is in contravention of section ten of article one of the constitution of the United States, declaring that no state shall pass any law impairing the obligation of contracts; to which ruling the appellant at the time excepted."—*Tr.*, 15.

The act referred to by the court is as follows:

"An act to assess all the lands in this state, heretofore donated to any railroad or railroad corporation, where the title to such lands has passed from the government of the United States.

"*Be it enacted by the General Assembly of the State of Arkansas:*

"SECTION 1. That the assessor in the different counties of this state shall, at the time he assesses the personal property in his county, in the year one thousand eight hundred and seventy-five, assess and place on the tax book of his county, under the same rule and restrictions as is required in assessing lands in this state, all the lands in his county heretofore donated, granted or given to any railroad or railroad corporation, when the title to the lands has passed from the United States government, and such lands shall thereafter be assessed and taxed as other lands in this state.

"SECTION 2. That all laws and parts of laws, in conflict with this act, be and the same are hereby repealed, and this act take effect and be in force from and after its passage. Approved November 30, 1875."—*Acts* 1875, *p.* 29.

ASSIGNMENT OF ERRORS.

The court below erred in holding that the lands described in the bill were not exempted from taxation by the terms of the charter of the Cairo and Fulton Railroad Company.

BRIEF OF ARGUMENT FOR PLAINTIFF IN ERROR.

We contend that the capital stock of the company represents the property of the company, whatever that may be. That is certainly true in this case.

The statute says: "The capital stock of said company, with

all the immunities and franchises herein specified, and all machines, cars, engines or carriages belonging to said company, together with *all their works and property*, and all profits which shall arise from the same, shall be vested in the respective stockholders of the company forever, in proportion to their respective shares," and then the act exempts the capital stock from taxation, in the language above cited. Having first defined the rights of the stockholders, as including all the property of the company, the legislature proceeds to exempt the stock from taxation; an exemption that must be as extensive as the stock itself, including all rights of property thus declared to be vested in the holders of the stock. If we put any other construction on the statute, we are forced to adopt the construction that this language was used simply for the purpose of guarantying the stockholders of the company from double taxation; a guaranty that would be of no practical value, since double taxation is as unusual as it is unjust.

In the case of *Baltimore* v. *Baltimore and Ohio Railroad Company*, 6 *Gill.*, 288, the statute declared that the shares of the capital stock of the company should be considered as personal property and exempt from the imposition of any tax or burden, and the court held that the specific property of the company was exempt.

In delivering the opinion the court said:

"But it is said that, although by the charter of the Baltimore and Ohio Railroad Company, its shares of stock may be exempt from all taxation, yet that such exemption in no wise protects from taxation the specific articles of property of the company. If such specific property be deemed liable to the imposition of taxes, no sufficient reason can be assigned why the franchise shall not be subject to like imposition. It is as much an ingredient in the shares of stock, and component part of their value, as is any portion of the corporate property of the company; and if under such an express legislative exemption as that now before us, the one be exempt from taxation, so is the other.

"The design contemplated by the legislature, in the insertion of this clause of the exemption in the act of the assembly, was

to confer a certain substantial, not nominal, benefit on the stockholders, and to induce capitalists to risk their money in a novel and hazardous enterprise. To impute to the legislature, in the case before us, an intention to exempt the shares of the stock from taxation, and at the same time to reserve the right to tax everything which constituted it a stock, and gave to it its value, would be gratuitously to cast an imputation on the legislature, inconsistent with every principle of judicial courtesy.

"If, as has been contended, the legislature designed to retain the right of taxation upon the property of the company, other than its franchises, it would have expressed its intention in terms about which there could have been no controversy; it would have limited its immunity to the franchises only, not to the shares of the stock, which embraces every species of property owned by the company."

To the same effect, see *Rome Railroad Company* v. *Mayor*, 14 *Ga.*, 275; *Augusta* v. *Georgia Railroad Company*, 26 *Id.*, 661.

In *New Haven* v. *City Bank*, 31 *Conn.*, 106, the same question being presented, the court said:

"But it is said there is an obvious distinction between the real property of a corporation and the shares of capital stock in the hands of its stockholders; and we may add that there is the same difference between the personal property of the corporation and its stock in the hands of the stockholders; but this consideration goes but a little way, if at all, toward the solution of the question now before us. That question is whether the promised exemption, which confessedly covers the intangible ideal rights called shares, in the hands of the stockholders, covers also the property—real and personal—in which the whole value of those shares consists; whether it is possible to impose a tax upon the latter without having the entire burden of imposition fall upon the former; and if it is not, whether the construction contended for by the town can be the true construction of the grant, and for the purposes of this question, we can see no difference between the real and personal property held by the corporation. The shares of the capital stock cover and include them both."

A similar decision was made in *Hannibal Railroad* v. *Shacklett*, 30 *Mo.*, 551.

In *Richmond* v. *Richmond Railroad*, 21 *Gratt.*, 604, the statute provided that "all machines, wagons, vehicles or carriages belonging to the company, with all their works and all profits which may accrue from the same, shall be vested in the respective shareholders forever, in proportion to their respective shares, and shall be deemed personal estate, and exempt from any charges or tax whatever." The terms of this exemption were held to include the real estate of the company.

In *State Bank* v. *Brackenridge*, 7 *Blackf.*, 395, the stock of a bank was exempted, and the court held that any property of the bank, whether lands, notes or specie, which it acquired and held under its charter, was a part of its capital stock.

In *State* v. *Hood*, 15 *Rich., Law.*, the stock of a company was exempted, and the court held that "the stock of a railroad company is the aggregate of the property and effects of the company, which, as a principal or capital fund, is employed in or made subservient to the prosecution of the specific business for which the company was chartered."

To the same purpose, see also *Osborne* v. *New York Railroad Company*, 40 *Conn.*, 491, and *State* v. *Haight*, 34 *N. J., Law* 319.

These cases only lay down and illustrate the same principle declared by this court in *Farrington* v. *Tennessee*, 95 *U. S.*, 679.

It seems to us that the court below arrived at its conclusion only by reason of two errors into which it fell. The court said that if the lands are exempt now, they will be exempt forever. Such would not be the case; for it is very obvious that the exemption would cease as soon as the lands should be sold or disposed of by the railroad company. The court also held that the exemption must be clearly shown to exist, all presumptions being against it. Certainly, all public grants must be construed strictly against the grantee. That is a general rule that has often been applied by this court. But in this case that rule cannot be made to do service, because the statute itself prescribes an opposite rule. In one of the acts making up the charter of the Cairo and Fulton Railroad Company, it is provided that the act "shall be

favorably construed for all the purposes therein expressed, and declared in all courts and places whatever." The other act declares that it shall be construed "liberally for the objects therein set forth."

In this respect this case differs from all other cases that have ascended to this court.

It was only by a restrictive interpretation that the court below was able to reach the conclusion of which the plaintiff in error complains; and that species of interpretation was expressly forbidden by the statute itself.

What was said by the court in *Baltimore* v. *Baltimore & Ohio R. R. Co., et sup.*, is equally applicable here, *mutatis mutandis:*

"It is a matter of notoriety and history, that in chartering the Baltimore and Ohio Railroad Company the legislature and the people of Maryland regarded the completion of the work as a great state object, tending eminently to promote the future wealth and prosperity of Maryland, and particularly the city of Baltimore, and to contribute to the union of the United States. They were also duly sensible that this gigantic and patriotic undertaking could not be accomplished but at great expense and hazard of pecuniary loss to its undertakers. As an encouragement to the enterprise, they were willing to confer on it every immunity, privilege and exemption which could be reasonably required, and tend to its completion. In expounding, therefore, these provisions of the charter of the company by which its expressed privileges and exemptions are imparted, liberal rules of interpretation for its benefit ought to be adopted to effectuate the beneficial designs of the legislature, and not such rules of restriction and limitation as should be applied to the charter of corporations incorporated for the peculiar benefit of their stockholders."

We may conclude this brief examination of the questions involved in the case by recalling the language of this court in *Murray* v. *Charleston*, 96 *U. S.*, 448:

"There is no more important provision of the federal constitution than the one which prohibits states from passing laws impairing the obligations of contracts; and it is one of the highest duties of this court to take care that the prohibition shall neither

be evaded nor frittered away. Complete effect must be given to it in all its spirit. The inviolability of contracts, and the duty of performing them, as made, are functions of all well ordered society; and to prevent the removal or disturbance of these foundations was one of the great objects for which the constitution was framed."

Respectfully submitted.

U. M. ROSE,
For Plaintiff in Error.

Supreme Court of the United States.

No. 173.

THE ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY CO., PLAINTIFF IN ERROR,

vs.

JOHN R. LOFTIN, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF ARKANSAS.

BRIEF FOR DEFENDANT IN ERROR.

The opinion of the court below in this record, (p. 15, *et seq.;* and see 30 Arkansas Reports, 693,) gives a full statement of the case, with the different legislative acts under which it arises. And these acts will not be repeated here, further than a mere reference to such parts as are deemed material.

It is conceded, by counsel for the plaintiff, that the act of 16th of January, 1855, is repealed; and he therefore must rely wholly upon the act of 26th of November, 1856, and the 14th section of the charter of the Cairo and Fulton Railroad Company, and the 25th section of the charter of the Mississippi Valley Railroad Company, for exemption from taxation. Relying upon the provisions of these

charters, plaintiff maintains that the term "capital stock" covers all the property, real and personal, of the company, for the purpose of exemption from taxation,—an untenable position, and in the very face of the authorities that must govern in such a case.

Section 11 of the Cairo and Fulton Railroad charter provides, that "the capital stock of said company shall be (forever) exempted from taxation; the road, fixtures, and appurtenances shall be exempted from taxation until after it pays an interest of not less than ten per cent. per annum."

If the "capital stock" means and includes all the property of the company, it covers the "road, fixtures, and appurtenances"; and why would the Legislature have made any discrimination, and have said that one should be forever exempt, and the other till the happening of a certain contingency? This distinction was kept up in the second section of the act of 16th of January, 1855. Besides this, the term "capital stock," in an act of incorporation, means the amount contributed or advanced by the stockholders, as members of the same, and does not refer to the property thereof. (The State *v.* Morristown Fair Association, N. J. Sup. Court, 3 Zabr., 195.)

This clause in the charter covers only such property as may be necessary for the purposes of the incorporation, and not those appendages which may be convenient for increasing the advantages and property of the company. (State *v.* Newark, 2 Dutch., (N. J.,) 519; 21 Iowa, 221, 235; 1 Dillon, 314; 6 Penn., 70.)

"Though the charter of a company makes them taxable at a specified rate upon their capital stock, with a provision that no *further tax* shall be levied, the company are nevertheless taxable upon real property not *used* or *occupied* for the *necessary* purposes of the company." (State *v.* Newark, 1 Dutch., (N. J.,) 315.)

"The charter of a railroad company enacted that the

stock, property, and effects of the company should be exempt from taxation: *Held*, That reference was had, so far as *real estate* was concerned, to that which the company was authorized to take by proceedings *in invitum*, and did not extend to other land which they might obtain by grant, and which might or might not be a source of profit or a matter of convenience." (Vermont Central R. R. Co. *v.* The Town of Burlington, 28 Vt., 193.)

It will be borne in mind by the court, that this charter of the Cairo and Fulton Railroad Company was approved 12th January, 1853, and the act of Congress granting the lands was approved 9th February, 1853; so that the lands could not have constituted part of the "capital stock" when the charter was granted. The subsequent act of the Legislature, of 16th January, 1855, the second section of which was designed to exempt these lands from taxation, shows that it had *not* been and was not regarded as settled that they were exempt under the provisions of the charter.

The attention of the court is here called to the *Delaware Railroad Tax Case*, (18 Wallace, 206,) for the rule of construction, that before any such exemption can be admitted, "the intent of the Legislature to confer the immunity must be clear, *beyond a reasonable doubt*. All public grants are strictly construed, and nothing can be taken against the State by presumption or inference."

The established rule of construction in such cases is, "that rights, privileges and immunities not expressly granted are reserved."

See, also, to the same effect, the *Erie Railroad Tax Case*, 21 *Wall.*, 492; *Bailey* v. *McGuire*, 22 *Wall.*, 215; *Tucker* v. *Ferguson*, 23 *Wall.*, 527; 6 *Otto*, 68, 69; and especially is it true, that the right to tax is never to be deemed surrendered, except upon the clearest and most explicit language.

But it is insisted that section 7 of the Cairo and Fulton

Railroad charter provides, that "this act shall be deemed a public act, and shall be favorably construed for all purposes therein expressed," &c.

But what of this? Is any purpose therein expressed to exempt these lands from taxation? Most certainly not.

Will it be contended that it must be so favorably construed as to make a donation annually of a large sum of money in the way of exemption from taxation to this company?

The first grant of those lands was made by Congress by act approved February 9, 1853, and this contained the requirement that the road should be completed in ten years; and a provision, (latter clause of section 5 of the act,) that unless it was so completed the lands unsold should revert to the United States.

The second act of Congress, approved July 28, 1866, renewed and extended the provisions of the first act, and regranted the lands and restored them to the former custody, control, &c. The latter clause of section 2 of this act provides: "That if one section of twenty miles of each of said railroads and branches shall not be fully constructed and completed as a first-class railroad within three years from the time the act became a law, and at least one section of twenty miles on each side of said railroad and branches each year thereafter, and the whole of said road and branches within ten years from the time this act shall take effect, then and in either of the said cases all the lands granted, or the grant of which is renewed or extended by this act, and which at the time shall be unpatented to, or for the benefit of the road or company making or suffering such failure, shall revert to the United States."

By two resolutions, one of March 3, 1869, and one of May 9, 1870, the Congress extended the time of completion of the first section of the road to December 20, 1870. The act of the Legislature of November 26, 1856, makes

reference in the preamble to the purposes and conditions of these acts of Congress, and though the State might not be able to take advantage of the forfeiture by failure to perform the conditions of those acts, yet if any exemption from taxation could be in any way claimed under the act of the General Assembly, would not the State have a right to say that that claim to exemption was forfeited by such failure to comply with the conditions of the acts of Congress, in reference to which the Legislature of the State acted?

Was the grant of immunity, if any, to be held ever ready to be tacked on to anything the company might acquire, it mattered not how, or for what purpose?

That the two and one-half *per centum* mentioned in section 13 of the act of 1856 is not in lieu of other taxes, see

Louisville R. R. v. *Louisville*, 4 *Bush.*, 479.
Delaware R. R. Tax Case, 18 *Wall.*, 206.
Erie R. R. Tax Case, 21 *Wall.*, 492.
10 *Penn. St.*, 449.

Though exempted from State taxes, the counties, cities, and towns may nevertheless tax, unless the exemption is broad enough to cover exemption from all.

St. Jo. v. *H. & St. Jo. R. R. Co.*, 39 *Mo.*, 476.
Pacific R. R. Co. v. *Dadle*, 48 *Mo.*, 282.
Orange & A. R. R. Co. v. *Alexandria*, 17 *Gratt.*, 176.

These positions being correct, it is not necessary at all to enter into any discussion of the question presented, as to impairing the obligation of contracts, as no exemption, either in language or intention, is established. But if such were the case, it is by no means certain it would be such a contract as is cared for and protected by the constitutional provision referred to. It rather bears the ap-

pearance of a mere gratuity, subject to be recalled at any time by the Legislature.

The able and searching opinion of the court below, already referred to, renders further argument for the defendant useless.

Respectfully,

A. H. GARLAND,
For Defendant.